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CURRENT TOPICS

Judicial Grasp of Detail

IN their responsible and exacting task, judges no doubt cherish encouragement from those best able to observe their work. A correspondent in the *Evening Standard* of 13th July, 1954, complimented Mr. Justice STABLE and Judge AARVOLD, whose summings-up he had heard as a waiting and serving juror, in these terms: " It has been a profoundly interesting, instructive, and impressive experience. The calm, quiet voices; the immense grasp of every minute, intricate detail; the scrupulous fairness to both sides in lengthy summing-up and direction; the great and humane wisdom and understanding of human weakness and circumstances all remain in the mind indelibly. If only men and women could bring a small degree of such clarity and wisdom into the judgment of their private problems, and such patience, surely human unhappiness would be lessened." With all this we enthusiastically agree, with the rider that, so far as judicial grasp of detail is concerned, it is the product of a long and arduous training just as any craftsman's grasp of detail is produced by training. Nevertheless, it is not unnatural that to the layman it should seem " something next to miraculous " and " the utmost stretch of human ingenuity," as Hazlitt wrote of the Indian jugglers.

The Pedestrian Crossings Regulations Again

WE drew attention at p. 462, *ante*, to the official view with regard to pedestrian crossings, that they are required by the 1954 Regulations on the subject to be lit by beacons in daylight as well as by night. This seemed to us to lay open a merely technical defence in certain cases to a charge of infringing the regulations, in circumstances where, logically and morally, no defence ought to avail. It is now pointed out to us that a result equally out of keeping with the purpose and spirit of the regulations might obtain if a driver or rider, prosecuted under reg. 4 for not according precedence to a pedestrian on the type of crossing on which there is a street refuge or central reservation, were to plead (*a*) that, for the purpose of that regulation, such a crossing consists really of two separate crossings, one on either side of the refuge (see the regulation); and (*b*) that the separate crossing on which he is alleged to have offended was not indicated in accordance with Pt. II of Sched. I to the regulations because not only could it not be said that at least two yellow globes mounted on separate posts were illuminated at the time but in fact only one such globe so mounted had been provided so as to indicate that separate crossing. Every day one sees pairs of crossings to each part of which such a defence, if technically valid, would apply. The island, if it has beacons at all, usually has them bracketed to a lamp standard. No doubt the point could be countered by reading the Schedule first and by regarding the lighting provisions as spent once the entire crossing from pavement to pavement is sufficiently constituted and indicated; so that the notional sub-division of the whole zebra-strip for the purpose of reg. 4 is restricted to determining whether or not a foot-passenger is

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within its limits. The merits of the situation obviously require some such reading. On the other hand, the official view seems to accord such importance to indication by flashing lights that, bearing in mind that the phrase " mounted on separate posts " is part of the regulations as a whole, we cannot be certain that this apparently unmeritorious defence would not succeed. On grounds of principle we would think that a pity.

End of Hire-Purchase Control

ONE of the peculiarities of hire-purchase control was that it did not become subject to criminal penalties until the Hire Purchase and Credit Sale Agreements (Control) Order, 1952 (S.I. 1952 No. 121), nearly seven years after the end of the war. The lifting of the restrictions imposed by that order and its amending orders as from 14th July, 1954, is an important event, if only because it was a reflection on traders that it was thought right to impose, with criminal penalties, a duty to help their country through a difficult period. The order restricted the number of transactions through the imposition of more rigorous terms of deposit and repayment. An appeal to traders to exercise restraint might have had the same effect, without the need for manufacturing criminal offences. It is now no longer criminal, or even illegal, to execute hire-purchase or credit-sale agreements before receiving a deposit of one-third (in some few cases one-quarter) of the hire-purchase price, or to arrange repayments over a longer period than eighteen months (in some few cases twelve months). Cars, refrigerators, vacuum cleaners, television and radio sets, bicycles and a list of other articles were affected by the restrictions. The trade, it now seems, is to be trusted to make its own arrangements, and it is unlikely that there will be serious competition in making tempting offers of less deposits and easy terms. It is more likely, indeed, that some agreement will be reached as to the amount of the deposit and the period over which the repayments are to be spread, for there is to be no increase in the amount of finance available, the general directive to the banks and the Capital Issues Committee remaining unchanged. The committee will not allow hire-purchase companies to raise more than £50,000 additional capital. The hire-purchase trade is now to be trusted to curb any " rogue elephant " activities on the part of a trader or finance company, large or small.

The Summons for Directions: Criticism and Reply

" A FIRST step towards the improvement of our legal procedure " was how the ATTORNEY-GENERAL described the R.S.C. (Summons for Directions, etc.), 1954 (S.I. 1954 No. 761 (L.5)), in replying to a motion, expressed to be exploratory in intention, to annul the rules moved in the Commons on 15th July. Sir LIONEL HEALD emphasised that this was only the first instalment of the " new approach " recommended by the Evershed Committee, and appealed to both branches of the profession to support the masters and judges in carrying out the rules (summarised briefly at p. 409, *ante*). To give up the traditional approach and say at an early stage of the proceedings: " I am going to tell you what our case is " was something that a lawyer did not like to be made to do, Sir Lionel said, but he believed that with a little determination it could be done. The chief burden of the criticism to which he was replying was that the Evershed Committee's fundamental proposal for the alteration in timing of the summons for directions had not been proceeded with, the committee having recommended that the hearing of the summons should take place after the time limited for discovery whereas in the rules the summons remained where it was, shortly after the close of the pleadings. The committee had thought it unrealistic to expect parties to define and narrow the issues at such an early stage, but the Attorney-General said that in order to keep costs down it had been decided that all actions should be brought under the control and supervision of the court as early as possible. It was hoped that a lot of actions which would otherwise drag on would thus be settled. A model form of summons for directions would shortly be available which would deal with evidence ordered to be given by affidavit, the agreement or limitation of expert evidence, the exchange of briefs of evidence, and other matters.

Bondsmen's Liability

THE phrase " the period of administration," if not its popular travesty " the executor's year," is one which is well understood in the law and practice of the administration of estates. It is not until the personal representative of a testator or intestate has got in all the assets of the estate, has paid the funeral and testamentary expenses and has provided for any legacies, so that the residue of the estate is ascertained, that that residue vests in the representative as trustee. Until that period is achieved, the equitable as well as the legal title to the estate remains in the representative, except in so far as he may have assented to particular legacies or devises, and even the Inland Revenue need a special statutory provision to tax the beneficiaries on the income that arises. Is the converse true—that as soon as the residue is ascertained the representative becomes *functus officio* and is thenceforth a trustee of any undistributed residue? Not, at least, for all purposes, according to the decision of the Court of Appeal in *Harvell* v. *Foster* (*The Times*, 17th July). Where, as in the case before the court, immediate distribution of the residue is impossible owing to the infancy of the person beneficially entitled, it is part of the duty of an administrator *as such* to retain the net residue in trust for the infant. And inasmuch as an administration bond is conditioned for the due administration of the estate according to law, sureties to a bond were for this reason held liable on it on the default of the administrator, notwithstanding that they themselves, as solicitors, had seen to the payment of the debts and expenses and had paid over to him the clear residue of the estate, which, according to their unsuccessful contention, he held from the moment of its receipt as trustee and not as administrator. It is a decision which may make it harder to find willing bondsmen in administration cases.

Divorce and Reconciliation

THE Beckley Social Service lecture, delivered this year by Mr. CLAUD MULLINS, has just been published by the Epworth Press (price 5s. net) under the title " Marriage Failures and the Children." It voices a protest against the error of the English law of divorce that divorce is primarily a legal matter, depending on questions of proof of matrimonial offences, with the children of the marriage being merely subsidiary problems. The children, in Mr. Mullins' view, are the central problem. He condemns the view that it is better for the children that parents should divorce rather than that they should live in a home where there is discord, and is in favour of reconciliation. The old police court procedure, which Mr. Mullins inherited when he was appointed a metropolitan magistrate, with the public in attendance, and the parties invited to cross-examine each other, made reconciliation difficult or impossible. Cross-examination he describes as sometimes threatening to develop into a sort of

brawl. "I never could understand," he says, "why the law assumed that humble people without any legal assistance could conduct a cross-examination, an art in which trained lawyers frequently fail." He rightly deplores the State-assisted road to divorce, without any facilities for reconciliation, provided by the Legal Aid and Advice Act, 1949, for those who formerly used the magistrates' courts with their system of reconciliation. Some system whereby the facilities for guidance and reconciliation can be put before those contemplating divorce is sadly needed. With regard to unaided clients, Mr. Mullins pays a tribute to solicitors whom he has known as "good social as well as legal advisers. They would never begin a divorce case until they were in possession of the facts about the home situation of their clients, and they would so direct their influence that the needs of their clients' children, if any, were brought fully into the picture in the preparatory stage." There are far more solicitors like this than is generally known and, given the procedural facilities for reconciliation, they could be of equal assistance to this end in legally aided cases as in their unaided cases.

Magisterial Solicitors

"In the hope that it may promote discussion among those who are interested in the question," our contemporary the *Justice of the Peace* has published certain comments by a candidate in the June Final Examination of The Law Society on the scope of the papers which he had to take. The candidate in question evidently writes from the standpoint of one who wishes to acquire the status of a qualified specialist in a magistrates' court, a clerk with the qualification of a solicitor. It is, it seems, the breadth of ground covered by the compulsory papers which troubles him, and he suggests that, "whilst it would not be desirable for solicitors to be graded," it might be possible for the examiners to devise examinations from the whole body of the law which would distinguish between budding solicitors according to the functions which they seek to perform in the legal profession—private practice, magistrates' courts, company law and secretaryship, local government, etc. If we may make our contribution to the discussion it is this, that such a scheme would in fact produce, if not grades of solicitors, at least several different kinds of solicitor, each and every one of them inevitably inferior in professional training to the practitioners of to-day. For it is as easy to under-estimate the importance of the wide syllabus which an articled clerk is forced to study as it is to place too much stress on the mere passing of examinations. That many competent magistrates' assistants are deterred by the scope of the existing syllabus from taking The Law Society's examinations may be an argument in favour of devising some different examination for the post of justices' clerk. It does not appear to us to justify a relaxation of the catholicity of interest in practical legal subjects which is required of those who aspire to advise the community on the diverse transactions of modern life. Whether any man can nowadays pretend to be proficient to a professional standard in all branches of present-day law is a somewhat different question, on which doubt has recently been expressed in an academic quarter. We should regret the introduction of any greater degree of specialisation than already exists at the student stage.

The Queen's Prize

THE sincerity of our congratulations to Major G. E. TWINE on his recent achievement at Bisley will not be regarded as impaired if we remark on the singularity of the headline by which the event was signalised in *The Times*: "Queen's Prize Won by Solicitor." It is always reassuring to find members of our profession excelling in non-legal pursuits, and there are very many of them that do so excel, thereby demonstrating a commendable human balance in a vocation too often thought to induce an arid isolation. Especially is it nice for the public to know that we are represented in such a useful accomplishment as rifle-shooting. But if we dilated more on Major Twine's victory itself we might expose a deplorable ignorance of anything about the art more intricate than the simplest exercises in application and grouping. Let us instead ponder upon the comforting anomaly that on this occasion the everyday avocation of the winner was thought to be worthy of note in the reputable newspapers. We are by now quite accustomed in the sensational Press to banners proclaiming that a wife has "named" a grandmother, in circumstances such that the appellations are plainly not correlative but merely irrelevant labels. It is almost as overworked a method of sidetracking the public mind from the serious implications of a news story as the appeal to the gambling instincts which we suppose is involved in saying that somebody has "won" a decree of divorce, or, in one case, won an income tax repayment. But *The Times* is above any suspicion of such intentions. However, we shall be thought ungrateful if we make further cavil, and that is far worse than being ignorant of the niceties of marksmanship.

Storm-Happy Lawyers

"WHILE most people curse the recent bad weather, many lawyers smile about it. They anticipate with pleasure a spate of litigation." Thus the *Evening Standard* gossip column the other night. We hope we can take a joke against ourselves, and we are encouraged in the belief that this particular effort was intended in jest by the appearance on the same page of an extremely well-informed and sensible leading article which dealt with the reasons for the increase in the numbers of actions against hospitals, and with the implications of that situation. But as to the quip about the weather, we doubt whether its full flavour was savoured by the paper's lay readers. For the spate is said to arise from cancelled hotel and accommodation bookings, and countermanded orders for commodities like ice-cream. Or are we, after all, wrong in thinking that it was a joke? Does the public really believe that lawyers get fat on petty debt-collecting, or, for that matter, that litigation is pleasurable for anybody? No, those smiles that the *Standard* writer saw on lawyer's faces were of the beatific sort that go with invisible haloes.

International Law Association

AN astonishing range of subject-matter is to be covered by the International Law Association in its forty-sixth conference, to be held at Edinburgh from 8th to 14th August, 1954. English and foreign experts are to discuss reports by committees of the Association on such varied subjects as International Company Law, International Monetary Laws, Insolvency, Rights to the Seabed and Subsoil, Inland Water Rights and Obligations between States, Diversion of Water in International Rivers, and the Charter of the United Nations. Members will attend services at St. Giles' Cathedral and St. Mary's Roman Catholic Cathedral on Sunday, 8th August, and on 9th August there will be a reception by the City of Edinburgh in the Assembly Rooms. A banquet will be held on 12th August. A committee is making special arrangements for the entertainment of ladies accompanying members to the conference.

OCCUPATIONAL HAZARDS—I

An employer in English law is not the insurer of his employees. During the past twenty years the burden of liability which has been placed on employers has increased considerably. Decisions in the courts have combined with statutory changes to enlarge the prospects of recovering damages to an injured workman; in particular, statutory provisions which place employers under an absolute liability do put them in a position very like that of an insurer. Nevertheless, it remains true that an employer is liable for an injury to an employee only if he can be proved to have been guilty of some breach of statutory or common-law duty to the employee. The weight of the burden on employers and the improved legal position of the employee have tended to obscure the fact that breach of duty must still be proved, and in several recent cases judges have remarked on what appears to be a widespread belief that if someone has been injured someone else must be liable. In spite of the extensive duties of employers at common law, summarised in *Wilsons and Clyde Coal Co., Ltd.* v. *English* [1938] A.C. 57, and in spite of the Law Reform (Contributory Negligence) Act, 1945, and of the Law Reform (Personal Injuries) Act, 1948, both of which enable injured workmen to recover damages which before the passing of those Acts they would have been unable to recover, there remain many hazards which must be accepted by those who engage in all occupations, though the degree of danger varies considerably. To take an extreme case, in *Watt* v. *Hertfordshire County Council* [1954] 1 W.L.R. 835; *ante*, p. 372, the plaintiff was a fireman whose leg was injured by a heavy jack which was being taken to the scene of an accident on a lorry. It was admitted that there was no method of securing the jack, which was on wheels, to this particular lorry, although there was another vehicle, not available at the time, to which it could have been secured. It was also admitted that a more suitable vehicle could have been obtained from seven miles away. A call for urgent assistance came to free a woman trapped under a heavy vehicle two or three hundred yards from the fire station where the plaintiff was on duty and where the jack was kept. No allegation of negligence was made against any individual, but in the course of the journey from the fire station to the scene of the accident the driver of the lorry had to apply his brakes suddenly, with the result that the jack moved and the plaintiff's leg was caught. On the evidence it was held by Barry, J., and by the Court of Appeal that there was no breach of duty on the part of the county council, who were the fire authority and the employers of the plaintiff.

Singleton, L.J., in the Court of Appeal, quoted the words of Asquith, L.J. (as he then was), in *Daborn* v. *Bath Tramways Motor Co., Ltd., and Trevor Smithey* [1946] 2 All E.R. 333, at p. 336: "In determining whether a party is negligent, the standard of reasonable care is that which is reasonably to be demanded in the circumstances. A relevant circumstance to be taken into account may be the importance of the end to be served by behaving in this way or in that. As has often been pointed out, if all the trains in the country were restricted to a speed of five miles an hour there would be fewer accidents, but our national life would be intolerably slowed down. The purpose to be served, if sufficiently important, justifies the assumption of abnormal risk." In *Watt's* case the life of a woman was in danger. No commercial questions arose; as Denning, L.J., said: "If this accident had occurred in a commercial enterprise without any emergency, there could be no doubt that the servant would succeed. But the commercial end to make profit is very different from the human end to save life and limb." The court therefore held that the plaintiff failed, on the ground that the fire service must always involve risk for those who are employed in it, and, while they are entitled to expect that their equipment shall be as good as reasonable care can secure, the firemen who answered this particular call were not required to take on any risk other than that which normally might be encountered in the fire service.

On the other hand, the Factories Acts contain several provisions which in effect make an employer liable for their breach irrespective of the presence or absence of negligence. Among the most important of these provisions are those relating to the fencing of dangerous machinery (s. 14 of the 1937 Act), hoists and lifts (s. 22) and floors, steps, stairs, passages and gangways (s. 25). Section 14 (1) reads: "Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced . . ." Prime movers and transmission machinery are separately dealt with. This section (and its equivalents in previous legislation) has always been strictly construed, so much so that, in the words of Salter, J., in *Davies* v. *Thomas Owen & Co., Ltd.* [1919] 2 K.B. 39: "If a machine cannot be securely fenced while remaining commercially practicable or mechanically useful the statute in effect prohibits its use." There is no doubt that this still remains the law. Quite recently, Donovan, J., in *Pugh* v. *Manchester Dry Docks Co., Ltd.* [1954] 1 W.L.R. 389; *ante*, p. 128, held that he was bound by the authorities to hold that the machine in question in that case in effect could not be used. A few weeks afterwards the Court of Appeal in *Frost* v. *John Summers & Sons, Ltd.* [1954] 2 W.L.R. 794; *ante*, p. 250, applied *Davies* v. *Thomas Owen* and in the course of his judgment Morris, L.J., said: "The question is not whether further fencing would have impeded use, but whether there was secure fencing. No dispensing power is provided for if there be cases where commercial practicability and compliance with the statute cannot co-exist . . ." It is of course true that, even if there is a breach of s. 14, there may be a very high degree of contributory negligence on the part of the plaintiff, sufficient in some cases to render him wholly the author of his own misfortune and thus in substance to blame for the accident.

Another example of absolute liability is found in s. 22 (1), which reads: "Every hoist or lift shall be of good mechanical construction, sound material and adequate strength, and be properly maintained." In *Galashiels Gas Co., Ltd.* v. *O'Donnell* [1949] A.C. 275 the House of Lords held that these words meant exactly what they said and that the employers were liable for the defective condition of a lift, although they had taken every practical step to ensure that the lift mechanism worked properly and was safe to use, and the failure of the brake which led to the accident was one which nobody could have anticipated or, after the event, explain. There are in this section no qualifying words such as "so far as reasonably practicable" or "free from patent defect."

The third example is found in s. 25 (1), which provides that: "All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained," in distinction to s. 26 (1), which to some extent overlaps it, and which provides that: "There shall, *so far as is reasonably practicable*, be provided and maintained safe means of access

to every place at which any person has at any time to work." Thus, if a means of access consists of a passage or other place mentioned in s. 25 the obligation is absolute; if it does not, or the access is rendered unsafe by something extraneous to the passage or whatever it may be, the obligation is not absolute. In *Mayne* v. *Johnstone & Cumbers, Ltd.* [1947] 2 All E.R. 159 a workman was installing a heavy machine in a factory when the floor gave way and he was killed. Lynskey, J., held that the words of s. 25 (1) meant that the floor should be of such sound construction and so maintained as to be fit to be used for the purpose for which the factory is intended to be used; the obligation is absolute and negligence is not material.

These three examples illustrate sufficiently the point that statute law in certain circumstances places a very high duty on the employer, but it must be stressed that such high duties as these must be expressly imposed. It is not sufficient merely to prove that a particular type of work is dangerous—unless an alleged breach of duty, in the absence of negligence, can be brought within the four walls of a statutory provision, an injured employee cannot recover. The landmark on this subject is provided by *Read* v. *J. Lyons & Co., Ltd.* [1946] 2 All E.R. 471. The injured person was a woman employed during the war, apparently against her will, by the Ministry of Supply as an inspector at a shell filling factory. While she was in the factory an explosion occurred in which one man was killed, and the plaintiff and others were injured. No negligence or breach of statutory duty was proved, but the plaintiff contended, in effect, that there is a category of things and operations dangerous in themselves and that those who harbour such things or carry on such operations in their premises are liable apart from negligence for any personal injuries occasioned by these dangerous things or operations. In other words, it was an attempt to extend the rule in *Rylands* v. *Fletcher* to cases where there was no "escape" from one person's land to another's and where the injuries were personal rather than material. The House of Lords declined to accept this proposition. "In truth," said Lord Macmillan, "it is a matter of degree. Every activity in which man engages is fraught with some possible element of danger to others . . . The more dangerous the act the greater is the care that must be taken in performing it . . . I am unable to accept the proposition that in law the manufacture of high explosive shells is a dangerous occupation which imposes on the manufacturer an absolute liability for any personal injuries which may be sustained in consequence of his operations. Strict liability, if you will, is imposed on him in the sense that he must exercise a high degree of care, but that is all. The sound view, in my opinion, is that the law in all cases exacts a degree of care commensurate with the risk created."

P. A. J.

Costs

COMPULSORY PURCHASES

THE pressing need for more housing accommodation and many other requirements of our new social climate have resulted in an ever-increasing use of powers of compulsory acquisition by local and other public authorities. In all of these cases where the vendor's costs are to be paid by the purchasing authority the question as to what costs the latter are liable to pay assumes considerable importance, and the importance of the question is emphasised now since the Solicitors' Remuneration Order, 1953, which came into operation on 1st March, 1953.

Compulsory acquisitions of land are normally effected under the Lands Clauses Consolidation Act, or under some other private or public Act; and these Acts provide that the vendor's costs shall be paid by the purchaser. Little difficulty would arise were it not for the provisions of r. 11 of the rules applicable to Sched. I, Pt. I, to the Solicitors' Remuneration Order of 1883, which state that in cases of sales under the Lands Clauses Consolidation Act or any other private or public Act under which the vendor's charges are to be paid by the purchaser, the scale shall not apply.

If the scale does not apply then it is clear that, in default of agreement, there is only one other basis of remuneration which must apply to such a case, and that is Sched. II to the Solicitors' Remuneration Order, and, formerly, the charges payable by the purchaser of compulsorily acquired land were made out in detail under that Schedule.

It is evident that this rule will apply only in the case of unregistered land, because the solicitor's charges in respect of registered land are regulated by the Solicitors' Remuneration (Registered Land) Order, 1925, as subsequently amended, and this order contains no provision similar to r. 11 of the Solicitors' Remuneration Order, 1883. It may be inferred, therefore, that in the case of a compulsory purchase of registered land, the purchasing authority will pay the vendor's solicitors' costs according to the scale provided by the Solicitors' Remuneration (Registered Land) Order, 1925, as amended by the Order of 1953.

It will be recalled that under the latter order the scale of fees in respect of transfers on sale of registered land was increased. Nevertheless, and despite this increase, the scale of fees, particularly where the price of the land is small in amount, is still low, and, under the old system of detailed charges made out in accordance with Sched. II as it was before the 1953 Order, it frequently would have paid solicitors to be remunerated according to Sched. II rather than under the scale laid down in the Solicitors' Remuneration (Registered Land) Order, 1925. This result could, and still can be, achieved by taking advantage of para. 1 (*m*) of the 1925 Order (re-designated para. 1 (*n*) by the 1953 Order) and giving notice in writing to the client, that is the vendor, requiring to be remunerated according to Sched. II. This notice will bind the purchasing authority, although they will normally have had no intimation of it.

As stated above, in the case of the compulsory purchase of unregistered land, and also in the case of the compulsory purchase of registered land where the vendor's solicitors have given the appropriate notice under para. 1 (*n*), *supra*, the vendor's solicitors' remuneration will be determined according to the rules of Sched. II, instead of being by way of scale remuneration calculated on the purchase price; and the question of the proper remuneration for the vendor's solicitors, since the Solicitors' Remuneration Order, 1953, came into force on 1st March, 1953, has given rise to some misgivings among acquiring authorities (cf. p. 307, *ante*, and see the *Estates Gazette*, 5th June, 1954, p. 605).

Prior to the 1953 Order the remuneration under Sched. II was by way of item charges, but since 1st March, 1953, the remuneration under that Schedule is to be such fee as is fair and reasonable having regard to the circumstances; and in order to assist in determining what is fair and reasonable

the order refers in particular to a number of circumstances that are to be taken into account, amongst which are the complexity of the matter, the skill, labour and responsibility involved on the part of the solicitor, the number and importance of the documents prepared or perused, without regard to length, the time expended by the solicitor, and, where money or property are involved, its amount or value.

The difficulty about the compiling of a bill of costs on this new basis is, of course, the divergence of opinion on (*a*) the weight to be given respectively to these various factors, and (*b*) (which is perhaps the more important because it goes to the root of the matter), the value to be placed on the solicitor's time. In the absence of any basic standard one cannot do more than hazard an intelligent guess as to the fee that would appear to be fair and reasonable to an unbiased third party.

Of all the factors to be taken into account, the one which it is suggested should form the foundation is that relating to the time involved, although here again there is ample room for a difference of opinion. It is within the knowledge of all that one person may deal more expeditiously than another with a particular piece of professional work (*a*) because he has greater professional experience, and (*b*) because he is more mentally alert, with the result that he may complete the work in, say, one-half of the time taken by another.

Be that as it may, the time factor is, it is submitted, the foundation upon which the edifice of professional fees under the new Sched. II must be built, and the height and other proportions of the structure must spring from that foundation. If this principle is conceded, then it is evident that the charges to be made for deducing the titles to two pieces of land that are being compulsorily acquired may well vary considerably in amount, so that the fees to be charged for a piece of small value may be greater than those charged for a piece of greater value. This could very easily arise owing to the title of one piece being far more complicated than the title of the other, and to the purchasing authority in the one case requiring a very detailed investigation into, say, restrictions and rights of way.

It appears, however, to be the purpose or one of the purposes of the new Sched. II that the solicitor's remuneration shall have particular regard to the time and skill involved, although, as indicated above, other factors are to be taken into account in determining finally the fee to be charged. In assessing the solicitor's fee, therefore, in the case of compulsory purchases, the first point to be considered is the time involved, and little difficulty will normally be experienced here where proper records are kept. When the time occupied in the matter has been ascertained, the next question is the rate to be applied.

Here there is a good deal of room for differences of opinion, and there is little doubt that the rate to be charged will be influenced to some extent by the overhead charges which the solicitor is necessarily bound to incur. Thus, a solicitor with a town practice will obviously expect to charge higher fees than a solicitor with a suburban practice, since the former will have to expend far greater sums on rent and salaries than the latter, and he would find it impossible to conduct his practice profitably unless he had some regard to this difference in overhead expenses.

When an economic hourly rate of remuneration is ascertained and is applied to the time involved, the resulting figure must be considered in the light of the other factors which Sched. II directs shall be taken into consideration. Thus, the question of responsibility, which may be linked with the value of the property, will affect the fee ultimately to be charged, but in this respect it is felt that if an economically profitable basis of remuneration is determined, which can be substantiated, and this is applied to a time element which has been compiled from recorded data, then the resulting fee must be regarded as the minimum, whatever the value of the property purchased, for it is clearly unreasonable to suggest that a solicitor shall reduce his basic fee because of the low price of the property, and thus lose money through his having to exercise his professional skill in relation to something of negligible financial worth.

On the other hand, if the value of the property is high, then he should be paid something more than a bare economical minimum fee, since he will be undertaking a serious financial responsibility in the exercise of his professional duties.

The number and importance of the documents prepared or perused without regard to the length is another factor to be taken into consideration, but in these cases relating to the purchase of property the time element will probably take this factor into account.

It has been suggested that the vendor's solicitors' remuneration under the new Sched. II in the case of compulsorily acquired property will tend to be in excess of the remuneration that could have been claimed in respect of similar transactions under the old Sched. II, and, more important, may exceed the corresponding scale charge, particularly in the smaller transactions.

This, of course, may very well be, but public authorities acquiring land under compulsory powers are spending public money and are bound to carry out their duties economically, and it may be, therefore, that the already not uncommon practice of local authorities to pay scale costs by agreement will become more widespread. The Law Society has recommended, pending the outcome of discussions with the various local government bodies as to the possible adoption of an appropriate scale, that vendors' solicitors should ask acquiring authorities to pay scale charges except where the consideration is small and the scale inadequate (*Law Society's Gazette*, April, 1953, p. 137) and the Council have asked to be informed of all cases being taken to taxation (see *ante*, p. 462)

J. L. R. R.

A Conveyancer's Diary

INHERITANCE ACT APPLICATIONS

THE Inheritance (Family Provision) Act, 1938, as originally enacted, prescribed a rigid time limit for the making of an application under the Act. If the exceptional case of an application to vary an existing order is disregarded, the time limit was a period of six months from the date on which representation in regard to the testator's estate for general purposes was first taken out (s. 2 (1)). This rather curiously worded provision made it possible (and still makes it possible) for an application to be made, that is to say, for an originating summons asking for the appropriate relief to be issued, before a grant is taken out, provided that the application is made within the period of six months before the grant (*Re Searle* [1949] Ch. 73); but there were several cases in which this rigid limitation could work great hardship. An obvious example of such a case was one where the original grant of probate was of a will which made proper provision for the dependant in question, but subsequently another and later will was found which made no provision for that

dependant; if a period of six months or more elapsed between the original grant and its revocation and replacement by the second grant, the dependant was deprived of all possibility of relief under the Act.

When the law of intestate succession was being amended by the measure which subsequently passed into law as the Intestates' Estates Act, 1952, the opportunity was taken of amending s. 2 (1) of the Act of 1938 by the insertion of a new subsection, numbered 2 (1A). This provides that if it is shown to the satisfaction of the court that the limitation of the said period of six months would operate unfairly (*a*) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the deceased's estate (whether or not involving a further grant of representation); or (*b*) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out; or (*c*) in consequence of some other circumstance affecting the administration or distribution of the estate, the court may extend that period. There then follow some other new provisions dealing, respectively, with the liability of personal representatives for distributing the estate, and limited grants.

Of the three cases with which s. 2 (1A) purports to deal, the first two are fairly specific. It is possible to pick holes in some of the language used, and doubtless in the course of time the court will be asked to give its opinion on its precise effect; for example, is a will "discovered" for the purposes of paragraph (*a*) if its existence is known all along to a personal representative who is executor under both wills, and who at first suppresses it but is later moved by his, or perhaps more probably her, conscience to disclose it? But the difficulties of interpreting and applying detailed provisions of this kind are likely to be less than those inevitably involved in the more general character of such a provision as that in paragraph (*c*), which came under the scrutiny of the court in the recent case of *Re Greaves* [1954] 1 W.L.R. 760 (also reported shortly at p. 337, *ante*).

This was an application by the widow of a testator who was dissatisfied with the provision made for her under her husband's will. A grant was made within a few weeks after his death, and the widow instructed solicitors who entered into negotiations with the solicitors acting for the personal representatives. These negotiations were opened well within the period of six months laid down by the Act, and were suspended because the personal representatives could not, apparently, then ascertain or estimate the size of the estate. After these negotiations were suspended, and after the expiration of the six-months period, a summons was taken out on the widow's behalf. When it was pointed out to her that the application was out of time, she relied on the new provision in s. 2 (1A).

It was submitted on the widow's behalf that the limitation in her case to the period of six months would operate unfairly for three reasons: first, because the widow was without information as to the true value of the estate; secondly, because the negotiations for a compromise had been suspended but not ended; and, thirdly, because the estate had not been distributed. It was further submitted that these were all circumstances which affected the administration or distribution of the estate, for the purposes of para. (*c*) of the subsection. This latter submission was accepted by Roxburgh, J., who, however, rejected the first submission because, in his view, no unfairness flowed therefrom. This is the important part of this decision, and is worth careful examination.

As to the first circumstance relied upon, the plaintiff's lack of information, in the learned judge's judgment no unfairness flowed from this circumstance because (*a*) the plaintiff's solicitors had never asked for any information regarding the true value of the estate, and (*b*) in any case the true value of the estate is seldom known within six months from the date of the grant. The first of these two reasons is peculiar to the case before the court, the second is quite general. Disregarding the latter, therefore, as being a circumstance likely to affect the administration or distribution of all estates, it is still possible to envisage a case where lack of knowledge of the value of the estate on the plaintiff's part might, perhaps, produce the required element of unfairness, for example, where there has been a misrepresentation (not, of course, necessarily wilful) concerning the value of the testator's assets or the size of the testator's liabilities. As to the second of the three circumstances relied upon, there had been time after the suspension of the negotiations and before the expiration of the six-months period to issue a summons. As to the last point, Roxburgh, J., refused to lay down a general rule that it would be unfair not to extend the time in every case in which no distribution had yet been made; this was not a circumstance which, in his judgment, made it unfair to require a plaintiff to proceed within the prescribed period.

In this case it was found as a fact that the reason why proceedings were not commenced in due time was that the plaintiff's solicitors were ignorant of the limitation period. This finding led inevitably to the conclusion that if there was any unfairness in holding the plaintiff to the prescribed period of limitation, it was due to this mistake and not to any of the matters relied upon by the plaintiff. The mistake which had been made was not a circumstance which affected the administration or distribution of the testator's estate within the meaning of para. (*c*) of the subsection, and the plaintiff's application therefore failed.

This reasoning would apply equally where the plaintiff does not seek legal advice and there is a failure to make an application within the prescribed period which is due, not to any mistake on the part of the plaintiff's advisers, but to the plaintiff's own ignorance of the relevant provision. This shows that para. (*c*) of the subsection, although framed as a sweeping-up provision, has very definite limits to its application, and that the limits within which it operates are such as to make it of a kind with the preceding paras. (*a*) and (*b*). On the face of it, the fact that an application for maintenance has not been made is, irrespective of the reason for the omission, a circumstance that may affect either the adminstration or the distribution of the estate; but as s. 2 (1A) is intended to deal with, and can only operate in, the situation which arises when an application has not been made within the prescribed time and is thus *prima facie* barred, some further circumstance, other than the omission itself, is necessary to bring the subsection into operation. If that circumstance is personal to the plaintiff or (what is essentially the same thing) to the plaintiff's advisers, it is not a circumstance which affects the administration or distribution of the estate.

The judgment in *Re Greaves* also contains some valuable observations on the practice to be adopted where s. 2 (1A) of the Act is prayed in aid. The summons in this case did not originally contain any reference to this provision because, of course, the plaintiff was at that time ignorant of the provisions dealing with the limitation of these applications as a whole. At the hearing before the master it was pointed out to her that the application was out of time, and the

plaintiff then elected to rely on s. 2 (1A). The summons was then adjourned into court, without any amendment, as a procedure summons. Roxburgh, J., held that this was not the correct procedure, which should be as follows. If s. 2 (1A) is to be relied upon, relief under that provision must be separately and distinctly asked for in the originating summons in which application is made for maintenance under the Act. The learned judge expressed the view that if this is done it would be proper and, indeed, desirable for the question of relief under s. 2 (1A) to be adjourned into court as a separate matter and before the hearing of the main application for maintenance, but such adjournment should be not as a procedure summons but as an originating summons adjourned into court in the ordinary way. It is obviously convenient to dispose of the question of relief under s. 2 (1A) before the parties are put to the expense of filing evidence on the main application, and there is little doubt that in the normal case this question will in future be adjourned into court for argument as a preliminary point.

"A B C"

Landlord and Tenant Notebook

DIRECTION TO PROVIDE FIXED EQUIPMENT

A LANDLORD'S reference to an agricultural land tribunal of a proposal to give a Ministerial direction (Minister of Agriculture and Fisheries) of which I recently read a report in an agricultural periodical is of some interest as illustrating the effect of agricultural legislation enacted in 1947. (It will be remembered that the Agriculture Act, 1947, originally included what is now the Agricultural Holdings Act, 1948.)

The proposal was under the Agriculture Act, and contemplated ordering the landlord of a Cumbrian farm to provide a new byre and cooling house. It was said that without such an additional structure the tenant would be unable to comply with regulations governing the production of milk.

The report does not—nor would it be expected to—go into details when it comes to the law applicable, but it seems clear that the Minister was, through the county agricultural executive committee, proposing to discharge functions conferred upon him under Pt. II of the Agriculture Act, 1947: "Good Estate Management and Good Husbandry." Section 10, dealing with good estate management, consists of three subsections. The first describes the nature of the subject by saying that an owner of agricultural land shall be deemed to fulfil his responsibilities to manage it in accordance with the rules of good estate management in so far as his management is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land, reasonably skilled in husbandry, to maintain efficient production as respects both the kind of produce and the quality thereof. Then, in the second subsection, we find that in determining whether the management is good estate management, regard shall be had to the extent to which the owner is *providing*, improving, maintaining and repairing fixed equipment in so far as is necessary to maintain that efficient production. The third subsection expressly enacts that the responsibilities of good estate management, when land is in the occupation of another person, shall not, in relation to the *maintenance and repair* of fixed equipment, include an obligation to do anything which that other person is under an obligation to do by virtue of any agreement.

"Fixed equipment" includes, both for the purposes of the Agriculture Act, 1947, and for those of the Agricultural Holdings Act, 1948, any building or structure affixed to land (Act of 1947, s. 109 (3); Act of 1948, s. 94 (1)). And, while normally the Minister has no power to issue directions to secure good estate management unless he has already made a supervision order under s. 12 of the 1947 Act, it is specially provided by s. 14 (3) of that statute that any direction requiring only the doing of one or more of the following things—the *provision*, improvement, maintenance or repair of fixed equipment—may be given though no supervision order is in force.

Notice of a proposal to give a direction is given under s. 15, which also provides that the owner of the land may require reference to the agricultural land tribunal if the estimated cost of the work, plus that of other *provision* of fixed equipment carried out in the last two years, exceeds the annual value of the land; and the same section considers the interests of the tenant-farmer who is given a *locus standi* in cases on the provision, etc., of fixed equipment. Where it is necessary to ascertain the respective liabilities of owner and occupier under the contract of tenancy in relation to fixed equipment, information of the terms may be demanded by the Minister; and, apart from that, the occupier is to be afforded an opportunity of making representations in any case in which the proposed direction would require the provision, etc., of fixed equipment (s. 15 (3) and (4)).

The report of the reference does not mention that there was any question of respective liabilities under the tenancy agreement, and the Ministry's case amounted to this: the byre was such fixed equipment as was required in order to secure that the landlord fulfilled his responsibilities to manage the farm in accordance with the rules of good estate management (s. 14 (1) (*b*) and (3)), i.e., to enable a tenant reasonably skilled in husbandry to maintain efficient production as respects the kind of produce and the quality and quantity thereof.

The landlord's main ground of objection was that to provide the byre would cost him (on the Ministry's estimate) between £1,650 and £2,000, and that this (at all events £2,000) would mean putting into the farm more than he had received in cash from the farm during the past years.

Was this relevant? It might be relevant to the question whether there was a right to refer at all, i.e., of jurisdiction; but we are not told of any evidence being given about annual value.

Then, the landlord said that when he had let the farm he had not visualised that it would be turned into an overloaded dairy farm. This point certainly suggests possibilities. Just as rent control legislation made no specific provision for the phenomenon now known, and widely known, as "change of identity," so, it might be said, has agricultural legislation omitted to contemplate cases in which the tenant-farmer might change the nature of his farming; and if the tenant, as many cases have shown, loses the advantages conferred by the Rent Acts in the one case, so ought the tenant-farmer to lose rights conferred by the Agriculture Act in the other case.

The analogy would not, however, be a sound one. The objects of the Rent Acts are to provide as many houses as possible at a moderate rent (*Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.)) and to protect a tenant from being turned out of his home (*Curl* v. *Angelo* [1948] 2 All E.R. 189 (C.A.)); that

of the Agriculture Act, headed "An Act to make further provision for agriculture," might be said to work out as making provision for further agriculture. The definition in s. 10 which I have cited, with its reference to the character and situation of the land and to efficient production as respects both the *kind* of produce and the quality and quantity thereof, could be used to answer the "turning into an overloaded dairy farm" point. Much the same comment could be made about a statement made by the landlord in evidence to the effect that he left the tenant to conduct his own business as he liked: the point would have been valid before 1947, but is no longer so.

The tenant is reported to have agreed that an additional £100 rent would be worth while if the work cost £2,000, and here we may leave Pt. I of the Act and consider what was once s. 35 in Pt. III and is now the Agricultural Holdings Act, 1948, s. 9. This section, which follows one providing for variation of rents in general, deals with increases for improvements carried out by landlords; it entitles a landlord to increase rent in the cases of three classes of improvement effected by him, of which one is those carried out in compliance with a direction given by the Minister under powers conferred on him by or under any enactment (subs. (1) (*c*)). The increase, if notified within six months from the completion of the improvement, takes effect as from that completion; and the amount is to be an amount equal to the increase in the rental value of the holding attributable to the carrying out of the improvement.

The landlord, who said that the tenant had agreed to build the milking parlour himself, no doubt appreciated that the tenant would thereby qualify for compensation for the improvement on the termination of the tenancy, on quitting the holding, under s. 48 of the Agricultural Holdings Act, 1948; in the circumstances, the landlord's consent in writing (s. 49), or the Minister's approval, which would have the same effect (s. 50), would obviously be obtainable. The measure of compensation in this case would be an amount equal to the increase attributable to the improvement in the value of the agricultural holding as a holding (s. 48).

A suggestion was made, in the course of the hearing, that the tenant might erect the byre and the landlord accept it "as a tenant's fixture"; the suggestion came from the chairman, and the landlord indicated that it appealed to him. "Tenant's fixture" is a rather unsatisfactory expression; but, if the chairman meant that the tenant was to forego or modify this claim for compensation for an improvement, as is authorised by s. 49 (1), while the landlord was to give up his right to purchase at a fair value which s. 13 (3) would give him, some clarification would be desirable before the suggestion was adopted as the basis of a compromise.

However, the substantial point taken by those appearing for the landlord was that a landlord was not obliged to equip his tenant so that the latter could comply with the law governing the sale of the product of the holding; and this is clearly an interesting and important point, the underlying suggestion being that the tenant and his cows could produce plenty of good milk without any new byre. The essential issue, it seems, is the connotation of the expression "enable" in the Agriculture Act, 1947, s. 10 (*2*): does an owner provide fixed equipment necessary to *enable* an occupier to maintain efficient production if further equipment is required by law?

R.B.

HERE AND THERE

THE WINK

"For a lawyer to wink at a magistrate during the hearing of a case is more than a breach of good manners—it can be contempt of court." That lapidary phrase from a Sunday newspaper monumentally embodies for all time one of the great principles of English legal procedure. In France, perhaps, or Italy, or the United States, if one may judge by reports of some of the more sensational proceedings in their courts, it is on occasion, though no doubt *ex gratia* as a special indulgence, permissible to shake one's fist at judge or magistrate, to shout at him, to put one's tongue out at him and, one presumes, to wink at him. But, by contrast, the traditions of English advocacy, stabilised by the atmosphere emanating from robes redolent of the high courtesy of times gone by, still conform to the uncompromising pronouncement of one of my favourite books of etiquette that "nothing is more atrocious than a wink" as indicating (if one may lapse into colloquial modernism) a private understanding between the winker and the winkee, and that, in the conventions of British justice, is an utterly inadmissible suggestion, even though judge and advocate may in fact know each other so well as to be able to see right through each other and out the other side.

"WAKING HYPNOSIS"

Now, strangely enough, the memorable pronouncement first quoted is not extracted from one of those helpful legal articles by one of that legion, not lost, indeed, but so far not yet found, of young gentlemen called to the Bar though, however eligible, hitherto not chosen. It comes from a sample instalment of a book by a medical man with a continental name, and the subject is "Waking Hypnosis." That particular extract introduces the case history and cure of a "brilliant young solicitor," who just could not stop winking at the court. It had all started when he stated a fact wrong while defending a client in the police court. "The magistrate was heavily sarcastic. Ashamed and resentful, the solicitor started to wink. The more worried he became the more his eyelids fluttered." Evidently the sarcastic magistrate refrained from proceeding to extreme measures, for, manfully determined not to take the line of least resistance and brief counsel, the brilliant, but now sadly handicapped, young solicitor continued to pursue the paths of advocacy, a prey to continual misunderstandings at the hands of outraged and uncomprehending occupants of the Bench. Snubbed, browbeaten, mocked (it is almost like the picture stories of those men and women whose life work almost fails for want of a hot milk drink at night), he consulted his physician, who filled him full of drugs, drilled him in eye exercises, pumped tonics into him by the bucketful. But all in vain. Meditating on the expense involved, one hopes as a taxpayer that all this happened before the days of National Health. Then "as a last hope" the doctor recommended hypnotherapy. The whole landscape changed. All that winking was traced to "self-hypnosis caused by intense mental concentration known as the 'C-factor' during an unpleasant experience." At the end of a week he had unburdened himself of an incident in his schooldays when a sarcastic teacher caught him winking at work and had him out for a humiliating reprimand before the whole class, thereby causing him "a high state of emotional embarrassment." Years afterwards the sarcastic magistrate had re-awakened the emotion. "Another vicious circle was

established and an unfortunate habit spasm born." Under waking hypnosis the brilliant young man freely admitted that this was very silly and never again winked involuntarily.

THE RIGHT TREATMENT

So a career was saved from extinction. But for that last resort the unfortunate fellow might have had to retire to office practice and there he might have encountered even greater perils if in the intimacy of an interview a lady client had mistaken his wink either for an improper advance or an honourable (if frivolously expressed) proposal or an impertinent comment on the recital of her matrimonial difficulties. The late Mr. Justice Horridge had a nervous affliction of a different but equally misleading kind, a broad settled smile (one might almost have said grin) which was apt to be misinterpreted by strangers. Thus a prisoner once who had some particularly unpleasant admissions to make so far misread the apparent geniality with which the judge was receiving them as to continue his recital with gusto and enjoyment, addressing it, so he thought, to a kindred spirit. He was amazed at the eventual explosion which almost blew him out of the witness-box. Another judge had a way of repeating "Good, good, good," even when taking down on his notes really quite shocking evidence. It is extremely interesting to speculate what waking hypnosis would have done for such peculiarities as those. Had the smiling judge experienced as a child prolonged agonies of compulsory laughter at the hands of a witty father? Had the other been reluctantly forced into her own mould by an undiscriminatingly charitable mother obstinately determined to see the good in everything and everyone? There are some members of the Bar who are also medical men. It would be interesting to see the results produced if they incorporated "waking hypnosis" into their armoury of advocacy. The most startling changes in the demeanour and attitude of impenetrable judges and hostile witnesses might be produced by persuading them to disinter from their childhood memories the terrible impression produced on them when they pulled the cat's tail and it scratched them, thereby producing a lasting psychological deformation. A new chapter would be opened in medico-legal science.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Limitation in Negligence Cases

Sir,—The author of the excellent article in your paper on the Commencement of the Limitation Period in Negligence Cases [*ante*, p. 447] (with which I entirely agree) might be interested in the case of *Paine* v. *Colne Valley Electricity Supply Co.* [1938] 4 All E.R. 803, where the law seems to have been assumed to be as he states it.

In that case a workman employed by the first defendants was killed by electric shock resulting from a dangerous installation erected more than six years previously by the second defendants. His widow succeeded against the first defendants who had not provided a safe system of working. They were unable, because of the Statute of Limitations, to get an indemnity in contract from the second defendants. They claimed, therefore, contribution from them as joint tortfeasors liable to the plaintiff in negligence. This claim also failed as the negligence was not the proximate cause of the accident. It was apparently assumed that the Statute of Limitations had nothing to do with this claim. This would seem right.

JOHN MONROE.

London, W.C.2.

Fusion

Sir,—Meade's Life of Benjamin, who after being Secretary of State for the South in the American Civil War became a leader at the Bar of England and was the author of Benjamin on Sales, has this to say about fusion:—

"Among Benjamin's clients in September, 1878, was Cyrus McCormick of Chicago, who consulted him in Paris about some matters relating to European sales of the McCormick reaper. Later Benjamin wrote to him from the Temple that he went entirely beyond his usual sphere in advising and counselling McCormick in Paris, 'but in London where I now resume my professional duties, I could not possibly devote the time required to your business, even if the rules to my profession permitted it'.

"And in a postscript he added that he was returning McCormick's original letter since he would have to give it to his solicitor. Upon authorisation from McCormick, Benjamin engaged Clark, Rawlings and Clark as his solicitors, assuring him that he could place 'the most implicit confidence' in their ability and integrity and urging him to give them all the contracts, memoranda, correspondence and other information relating to the matter. After being employed by McCormick, the solicitors consulted Benjamin, and on 21st December, 1878, he drew up an opinion in the case. It is curious to note the extra trouble to which the Chicagoan had to put himself in order to continue his business relations with Benjamin; it would have been so much simpler if he could have continued his direct dealings with him instead of making the contact through a solicitor. Benjamin is on record as stating that he felt the separation of the English legal profession into barristers and solicitors was 'a real public mischief.' And among Englishmen who agreed with him were Sir Edward Clarke, K.C., and Baron Bramwell, a distinguished judge with a clear and independent mind."

There can be no better evidence of the value of fusion than that given by a man who attained considerable eminence, first, where there was a fusion, and secondly, where the two branches of the law were separate, as they still are.

T. SIMPSON PEDLER.

Temple, E.C.4.

OBITUARY

MR. E. H. DAVIES

Mr. Ernest Henry Davies (Croix-de-Guerre), retired solicitor, of Bedford Row, W.C.1, died on 12th July, aged 89. He was admitted in 1886.

MR. H. M. MOSS

Mr. Harold Moreton Moss, solicitor, of Northwich, died on 7th July, aged 74. He was admitted in 1906 and in the Honours Examination of that year he was placed First in the First Class and awarded the Scott Scholarship, the Daniel Reardon Prize and the Clement's Inn Prize. He was a former member of Cheshire County Council and a former Chairman of Northwich Urban District Council. For some years prior to his death he was Deputy Registrar of Northwich County Court.

MR. A. E. HATTERSLEY

Mr. Albert Edward Hattersley, solicitor, of Mexborough, died on 6th July, aged 85. He was admitted in 1891.

MR. J. F. JESSON

Mr. John Fisher Jesson, retired solicitor, of Ashby-de-la-Zouch, died on 7th July, aged 74. He was Clerk to the Coalville Urban Council for several years. He was admitted in 1903.

MR. G. A. PARKIN

Mr. George Allan Parkin, retired justices' clerk, died on 11th July, aged 61. For twenty-five years he was chief clerk to the East Ham Justices, and was also president of the Essex Justices Clerks' Society.

BOOKS RECEIVED

Chapman's Five Hundred Points in Club Law and Procedure. Twelfth Edition. Edited by FRANK R. CASTLE, General Secretary, Working Men's Club and Institute Union. 1954. pp. (with Index) 184. London: Working Men's Club and Institute Union, Ltd. 4s. 6d. net.

Questions and Answers on Police Duties. Omnibus Edition. By CECIL C. H. MORIARTY, C.B.E., LL.D., sometime Chief Constable of Birmingham. 1954. pp. v and (with Index) 183. London: Butterworth & Co. (Publishers), Ltd. 9s. 6d. net.

Marriage Failures and the Children. By CLAUD MULLINS. 1954. pp. (with Index) 61. London: The Epworth Press. 5s. net.

The English Conflict of Laws. Third Edition. By CLIVE M. SCHMITTHOFF, LL.D. (Lond.), LL.B. (Berl.), of Gray's Inn, Barrister-at-Law. 1954. pp. xliii and (with Index) 514. London: Stevens & Sons, Ltd. £2 5s. net.

A History of the Chartered Accountants of Scotland. 1954. pp. xi and 183. Edinburgh: The Institute of Chartered Accountants of Scotland.

Personal Property. By J. CROSSLEY VAINES, LL.M., of Gray's Inn and the Northern Circuit, Barrister-at-Law. 1954. pp. xliv, 350 and (Index) 30. London: Butterworth & Co. (Publishers), Ltd. £1 17s. 6d. net.

Trial of John Thomas Straffen. Notable British Trials Series, Vol. 80. Edited by LETITIA FAIRFIELD, C.B.E., M.D., Barrister-at-Law, and ERIC P. FULLBROOK, Clerk to the Justices, Reading County Court. 1954. pp. xiii and 299. London, Edinburgh, Glasgow: William Hodge & Co., Ltd. 15s. net.

Heywood and Massey: Court of Protection Practice. Seventh Edition. By DONALD G. HUNT, of the Court of Protection, and JOHN F. PHILLIPS, LL.M. (Cantab.), of Gray's Inn, Barrister-at-Law. 1954. pp. xxxv and (with Index) 614. London: Stevens & Sons, Ltd. £5 5s. net.

The Public Corporation. A Comparative Symposium. University of Toronto School of Law Comparative Law Series, Volume I. Editor: W. FRIEDMANN, Professor of Law, University of Toronto. 1954. pp. vi and (with Index) 612. London: Stevens & Sons, Ltd. £3 10s. net.

REVIEWS

"Taxation" Key to Income Tax and Sur-tax. Edited by RONALD STAPLES. 1954. London: Taxation Publishing Co., Ltd. 7s. 6d. net.

This is a useful compendium or desk-book designed to refresh the practitioner's memory upon all aspects of income tax and sur-tax. It is conveniently provided with a thumb-index—indeed, with two thumb-indexes—and the lay-out of the book enables the reader to find his place with great ease. There is an astonishing amount of information compressed within its pages—from the rates of tax in 1899 to a summary of the 1954 budget proposals, from earned income relief to double tax relief and from grossing-up tables to wear and tear allowances.

It can be confidently recommended for its purpose—to refresh the memory of one who knows his way about the law and practice of income tax; it might be a little dangerous in the hands of one who does not.

Arnould on the Law of Marine Insurance and Average. Volumes 1 and 2. Fourteenth Edition. By LORD CHORLEY of KENDAL, M.A. (Oxon), of the Inner Temple and Northern Circuit, Barrister-at-Law. 1954. London: Stevens & Sons, Ltd. Two volumes, £8 8s. net.

It has been said that no proper appreciation of the law of insurance generally can be obtained without a sound knowledge of marine insurance law. The basic principles of marine insurance law dominate the whole field of insurance, though naturally there is considerable insurance law applicable only to the younger branches of insurance, that is, to life, fire and accident insurance.

This work is looked upon as indispensable by those whose practice includes marine matters, but it should also make an appeal to those whose practice brings them in contact with one or more of the other branches of insurance. In a difficult question of construction in a life assurance case, it was found that a guide to the answer was more clearly shown in this work than in any other, for the chapter on the principles of construction is exceptionally well presented.

Decisions which were sound in the economic and social conditions of the time can completely lose their force later. Insurance practice has made great advances to meet the changes and it is suggested that some of the law books seem to make insufficient allowance for this fact. Here, however, considerable revision has been made; by cutting out the dead wood the author has made the text clear and authoritative.

The New Law of Education. Fourth Edition. By Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law, and P. S. TAYLOR, M.A., Chief Education Officer, County Borough of Reading. 1954. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net.

Developments in educational policy have necessitated four editions of this book in nine years. The introduction in Pt. I has been revised and now explains how the present law works in practice rather than the differences between it and the old law. Part II contains several recent statutes, e.g., the Education (Miscellaneous Provisions) Act, 1953, the Local Government (Miscellaneous Provisions) Act, 1953, and the School Crossings Patrols Act, 1953. Important amendments are those enabling additional grants to be given towards enlarging and, in some cases, in establishing voluntary schools. Part III consists of Statutory Instruments, and Pt. IV includes a selection of current circulars and administrative memoranda. This volume contains a mass of information, and may be regarded as indispensable to education authorities and their legal advisers.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

PRACTICE: APPEAL: JURISDICTION: FAILURE TO APPEAL TO FINAL COURT OF APPEAL OF COLONY

Kenyatta and Others *v.* R.

Lord Goddard, Lord Morton of Henryton, Lord Cohen and Lord Keith of Avonholm

7th July, 1954

On the hearing of a petition for special leave to appeal from a judgment of the Supreme Court of Kenya, dated 15th February, 1954, which had affirmed a decision of a resident magistrate convicting the petitioners of managing and assisting in the management of an unlawful society (Mau Mau) and of being members of the society, the question was raised by the Board whether the petition was competent in view of the fact that the petitioners sought to come direct to the Board and had not first appealed to the Court of Appeal for Eastern Africa, and attention was called to *Dagnino* v. *Bellotti* (1886), 11 App. Cas. 604, where it was said: "The proper course for the appellant to have adopted was, if he considered that the verdict was not warranted by the evidence, to move the court for a new trial. He has not exhausted the remedies which the rules and practice of the court directed should be observed in cases where a verdict of the judge and assessors is objected to on the ground that it is not warranted by the evidence." It was contended for the petitioners that there was nothing in the legislation establishing the Court of Appeal of Eastern Africa to say that the right of application to the

Privy Council for special leave should be interfered with in any way. That right, under the Judicial Committee Act, 1844, was that: "It shall be competent to Her Majesty, by order or orders . . . made with the advice of Her Privy Council, to provide for the admission of any appeal or appeals, to Her Majesty in Council, from any judgment, sentence, decree or orders of any Court of Justice within any British colony or possession abroad, although such court shall not be a court of error or a court of appeal within such colony or possession."

Counsel for the Crown said that he did not dispute the theoretical possibility of bringing a petition direct from the Supreme Court of Kenya, but he submitted that there was a discretion in the Board and that it would be wrong to permit an appeal to the Privy Council in the present case since the right to go to the Eastern Africa Court of Appeal had not been exhausted.

Counsel for the petitioners then said that, it being conceded that the Board had jurisdiction, the only question was whether any, and if so what, weight should be attached to the failure to appeal first to the Court of Appeal for Eastern Africa, and he submitted that in all the circumstances no weight should be attached to it. What little authority there was on this matter showed that one could go straight from the court of first instance to the Board, but he could not imagine that anyone would be encouraged to do that to-day. [Reference was made to Bentwich, Privy Council Practice, 3rd ed. (1937), p. 125.] *Dagnino* v. *Bellotti, supra*, was a civil case, and it did not help or hinder on the present point.

The BOARD directed the hearing of the petition to continue and, having heard it on its merits, dismissed it, Lord Goddard saying: "Their lordships do not find it necessary to decide whether the fact that the applicants did not first appeal to the Court of Appeal for Eastern Africa ought in this particular case to be regarded as a ground for refusing leave, because they are of opinion that apart from that question no grounds have been established which would justify their lordships in advising Her Majesty to grant leave."

APPEARANCES: *D. N. Pritt*, Q.C., *R. K. Handoo* and *Ralph Millner* (*Hy. S. L. Polak & Co.*); *Melford Stevenson*, Q.C., *A. G. Somerhough*, Q.C., and *J. G. Le Quesne* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 1053**

COURT OF APPEAL

MORTMAIN: LICENCE: UNREGISTERED FOREIGN COMPANY: SHORT LEASE

Morelle, Ltd. *v.* Waterworth

Rodnall, Ltd. *v.* Ludbrook

Singleton, Denning and Morris, L.JJ. 16th June, 1954

Appeal from Lambeth County Court.

A company registered in Eire, neither incorporated nor registered under the Companies Acts and having no place of business in this country, purported to acquire by assignment the residue of a ninety-nine year lease on house property in London, and served notice to quit on the tenant. On a preliminary point the tenant contended that as the company did not hold the land under the authority of any statute and had not obtained a licence in mortmain, they had forfeited it to the Crown under the provisions of s. 1 of the Mortmain and Charitable Uses Act, 1888. The company contended that a licence was not necessary where land was held under a short lease. The county court judge sustained the tenant's objection, and held that his decision applied equally to a second company similarly situated. Both companies appealed.

SINGLETON, L.J., said that the company claimed to be the holders of a ninety-nine year lease or the residue thereof, and it seemed to him that that fell within the provisions of s. 1 (1) of the Act of 1888, read in the light of the definition section, s. 10. He could not think that it was necessary to look at the length of a lease in each case to say whether it was within the provisions of the section. The company was registered in Eire and not in this country; it had no licence or authority, and consequently there was a breach of s. 1 (1) of the Act. It followed that the land was forfeit to Her Majesty from the date of the assurance. The case gave rise to some interesting speculations, one being that if a company had no place of business in this country, it was rather difficult to serve it with notices under the Housing and other Acts. There were no difficulties in the way of an oversea company holding land here if it wanted to do business in this country, and to do it properly. He would dismiss the appeal.

DENNING, L.J., agreed. Under the old mortmain statutes it had been held that a lease for ninety-nine years was not mortmain; but the position was different since the Act of 1888. In order to be valid the grant or assignment to a corporation of, *inter alia*, a lease, long or short, required a licence from the Queen or else the licence must be dispensed with by statute. This particular case was a modern application of the law of nearly 700 years ago. A foreign company which did not establish any business office in England and did not register itself in any way put itself in a position, if not to defeat its obligations entirely, at least to make it most difficult for its dues to be collected from it. It became "like unto a dead hand."

MORRIS, L.J., agreed. Appeal dismissed.

APPEARANCES: *J. P. Widgery* and *J. M. Cope* (*S. A. Bailey and Co.*); *K. R.Bagnall* (*R. C. Hines*); *Arthur Mildon* (*Cliftons*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 257**

PROMISE OF MARRIAGE BY MARRIED MAN: DAMAGES FOR INNOCENT PROMISEE

Shaw *v.* Shaw and Another

Singleton, Denning and Morris, L.JJ. 25th June, 1954

Appeal from Pilcher, J.

In 1937, Percy John Shaw, a married man, representing himself as being a widower, went through a form of marriage with the plaintiff. She did not know that he had a wife living. For fourteen years they lived together as, and were treated as, husband and wife. The plaintiff gave him all the savings she had made prior to the marriage, and together they built up a farming business. In 1950, his legal wife died, and in 1952 he himself died intestate. After his death the plaintiff became aware for the first time that she had not been legally married to the deceased and she brought an action against the administrators, a son and daughter, claiming damages for breach of promise of marriage by the deceased. Pilcher, J., dismissed her claim on grounds of public policy, and she appealed.

SINGLETON, L.J., said that *Wild* v. *Harris* (1849), 7 C.B. 999, and *Millward* v. *Littlewood* (1850), 5 Ex. 775, showed that, from the point of view of public policy, there was a great difference between the case where both parties knew that the promisor was unable to marry lawfully and a case where one party was innocent. Further, as in *Fender* v. *St. John Mildmay* [1938] A.C. 1; 53 T.L.R. 885; [1937] 3 All E.R. 402, the promise could have been carried out lawfully when the legal wife died. The claim of the plaintiff was not, therefore, excluded on grounds of public policy. Secondly, her claim was not barred by the Limitation Act, 1939, because there was a continuing warranty running with the promise to marry that the promisor was in a position to marry. The damage resulting from the breach of that warranty was not sustained until Shaw died, and the cause of action accrued then. Further, s. 26 (*b*) of the Limitation Act, 1939, applied (see *Beaman* v. *A.R.T.S., Ltd.* [1949] 1 K.B. 550), for there was concealed fraud. The damages recoverable by the plaintiff should be assessed having regard to what the plaintiff would have been entitled to receive as a widow on intestacy.

DENNING, L.J., agreed. The breach of warranty continued until Shaw died in 1952, but the breach of promise to marry occurred in 1950. From whichever standpoint the claim was considered, it was not, therefore, barred by the Limitation Act, 1939.

HODSON, L.J., concurred. Appeal allowed.

APPEARANCES: *W. A. L. Allardice* (*Sharpe, Pritchard & Co.*, for *Dallow & Dallow*, Wolverhampton); *R. E. Chapman* (*Peacock & Goddard*, for *J. C. H. Bowdler & Sons*, Shrewsbury).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 265**

TAX AVOIDANCE SCHEME: JURISDICTION OF COURT OF APPEAL TO SANCTION COMPROMISE

***In re* Lord Hylton's Settlement; Barclays Bank, Ltd. *v.* Jolliffe**

Singleton, Jenkins and Hodson, L.JJ. 1st July, 1954

Appeal from Harman, J.

Under a settlement made in 1923 between the late Lord Hylton as settlor, Barclays Bank, Ltd., as trustees, and the present Lord Hylton, the income of a trust fund was payable to the present Lord Hylton, as tenant for life, until some act or event should happen whereby the income would become vested in or charged in favour of some other persons, in which event discretionary trusts would come into operation in favour of the tenant for life,

his wife and issue. By cl. 10 of the settlement it was provided that, after the death of the tenant for life, the trust fund was to be held in trust for the issue of the tenant for life in such shares and with such gifts over " and with such provisions for their respective advancement (either overreaching the interests prior to the power or not) and maintenance and education and otherwise in such manner for the benefit of such issue " as the tenant for life should by deed or will appoint, with ultimate trusts in default of appointment for the children of the tenant for life at twenty-one or marriage. The tenant for life had had three children, and by an appointment made in 1951 he appointed the whole trust fund and the income thereof in favour of his eldest son, Raymond Hervey Jolliffe, if he should attain the age of twenty-one years. Mr. Jolliffe attained the age of twenty-one in 1953 and the tenant for life requested his trustees to pay the whole capital to Mr. Jolliffe. The tenant for life's two younger children were still infants. The trustees of the settlement took out a summons to have the effect of cl. 10 of the settlement and the appointment determined. Harman, J., held that the trustees held the trust fund upon trust for Mr. Jolliffe absolutely, in remainder expectant on the death of the tenant for life, that there was power under the settlement to apply capital for the advancement in life of Mr. Jolliffe in some definite way, and further that the income of the trust fund was still payable to Lord Hylton, as the tenant for life. Mr. Jolliffe appealed on the ground that Harman, J., had misconstrued cl. 10. The Court of Appeal was asked to sanction the compromise of the appeal on the terms that the trustees should raise out of the trust fund a sum of £5,000 and hold the same upon trust for the benefit of any future wife of Lord Hylton and his children other than Mr. Jolliffe as thereby provided and, subject as aforesaid, the trust fund should be held upon trust for Mr. Jolliffe free from the prior trusts of the settlement to take effect during the life of Lord Hylton. The result of the compromise would be to effect a large saving in estate duty should the tenant for life survive five years. The question was raised whether the Court of Appeal had power to sanction the compromise. It was submitted on behalf of Mr. Jolliffe that the court had jurisdiction and that the case was not within *Chapman* v. *Chapman* [1954] 2 W.L.R. 723; *ante*, p. 246. There was here a real dispute about cl. 10 of the settlement, the ambiguity appearing patently, and there was a point of substance to be argued on appeal which had been compromised.

The COURT held that it had jurisdiction to sanction the compromise, and that it should be approved and the appeal dismissed.

APPEARANCES: *Geoffrey Cross*, Q.C., and *Kenneth Elphinstone*; *J. L. Arnold*; *E. I. Goulding*; *A. H. Droop* (*Slaughter & May*); *Withers & Co.*

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 1055**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Electricity Reorganisation (Scotland) Bill [H.C.] [13th July.
Finance Bill [H.C.] [13th July.
Town and Country Planning Bill [H.C.] [14th July.
Transport Charges, etc. (Miscellaneous Provisions) Bill [H.C.] [15th July.

Read Second Time :—

Baking Industry (Hours of Work) Bill [H.C.] [15th July.
Bradford Corporation (Trolley Vehicles) Order Confirmation Bill [H.C.] [15th July.
Hartlepool Port and Harbour Bill [H.C.] [15th July.
Mines and Quarries Bill [H.C.] [15th July.
Pier and Harbour Order (Brighton) Confirmation Bill [H.C.] [12th July.
Pier and Harbour Order (Cowes) Confirmation Bill [H.C.] [12th July.
Pier and Harbour Order (Llanelly) Confirmation Bill [H.C.] [12th July.
Pier and Harbour Order (Newport (Isle of Wight)) Confirmation Bill [H.C.] [12th July.
Pier and Harbour Order (Salcombe) Confirmation Bill [H.C.] [15th July.
Pier and Harbour Order (Whitehaven) Confirmation Bill [H.C.] [15th July.
Wolverhampton Corporation (Trolley Vehicles) Order Confirmation Bill [H.C.] [15th July.

Read Third Time:

Housing (Repairs and Rents) (Scotland) Bill [H.C.] [14th July.
Marriage Act, 1949 (Amendment) Bill [H.C.] [13th July.
Post Office (Site and Railway) Bill [H.C.] [13th July.
Protection of Animals (Anæsthetics) Bill [H.C.] [13th July.
Wesleyan and General Assurance Society Bill [H.C.] [12th July.

In Committee :—

Long Leases (Scotland) Bill [H.C.] [15th July.
Pharmacy Bill [H.L.] [14th July.
Post Office Savings Banks Bill [H.L.] [14th July.
Slaughter of Animals (Amendment) Bill [H.C.] [15th July.
Television Bill [H.C.] [14th July.
Trustee Savings Banks Bill [H.C.] [14th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Ministers of the Crown (Fisheries) (No. 2) Bill [H.C.] [13th July.

To provide for the establishment of a Parliamentary Secretary to the Minister of Agriculture and Fisheries with special responsibility for fishery; and for purposes connected therewith.

Read Second Time :—

Beit Trust Bill [H.L.] [16th July.
Brighton Corporation Bill [H.L.] [13th July.
Isle of Man (Customs) Bill [H.C.) [16th July.

Read Third Time :—

Gas and Electricity (Borrowing Powers) Bill [H.C.] [16th July.
London County Council (Holland House) Amendment Bill [H.L.] [12th July.
Summary Jurisdiction (Scotland) Bill [H.L.] [12th July.

B. QUESTIONS

TRIBUNALS (PROCEDURE)

Mr. GOWER asked whether an inquiry would be appointed to consider the procedure of all tribunals in the United Kingdom, and in particular, to review the question whether evidence on oath should be taken in all cases, and whether persons appearing before those tribunals should be given in all cases the right to be represented by an advocate, and a general right of appeal to an ordinary court of law. With the extension of legal aid had not the main barrier to extending these procedures to tribunals now disappeared?

The ATTORNEY-GENERAL said he did not think any useful purpose would be served by such an inquiry. On every occasion when new tribunals had been set up, Parliament had been anxious to investigate this question carefully, and he thought that that would be a better safeguard. [12th July.

ESTATE DUTY (ACTIVE SERVICE)

Asked to publish a statement saying what dividing line was taken by the Inland Revenue between the theatres of operation which were regarded as active service and those which were not, there being at present considerable doubt about Kenya and Malaya and murders occurring in the Suez Canal Zone, Mr. BUTLER said he would do everything he could to remove doubts in anyone's mind. He would carefully consider the matter. [13th July.

FURNISHED HOUSES (RENT RECEIPTS)

Asked whether he would make a regulation under s. 8 of the Furnished Houses (Rent Control) Act, 1946, requiring the lessor to give the lessee receipts for rent paid, as in the absence of rent receipts several of the provisions of that Act were being rendered inoperative, Mr. ERNEST MARPLES said that the Minister had taken legal advice on s. 8 and was advised that under it receipts for rent could not be asked for. He would, however, ask him to look into the matter again, and in the meantime he would be glad to have details of alleged abuses. [13th July.

COPYRIGHT ACT

Mr. H. STRAUSS refused to amend the Copyright Act so as to prevent authors or composers, or the Performing Right Society, acting on their behalf, from obtaining fees from innkeepers or hotel keepers who permitted their guests to listen to television or radio programmes. [13th July.

PUBLIC ADMISSION TO HOUSES (TAX DEDUCTIONS)

Mr. BUTLER stated that the opening to the public of houses with a charge for admission would be treated as the carrying on of a trade for income tax purposes if the property was maintained solely or mainly as a show-place, and managed on a commercial basis and with a view to the realisation of profits within the meaning of s. 124 (2) of the Income Tax Act, 1952. Particulars of matters taken into account by the Inland Revenue in considering whether a trade was carried on were set out in App. II to the Report of the Committee on Houses of Outstanding Historic or Architectural Interest, published in 1950. Generally speaking, it must be shown that a definite organisation had been set up for attracting and dealing with visitors, and that the whole activity was undertaken with the intention of making a profit and not for purely altruistic motives or with a view to getting relief from tax. Any deduction allowable where a trade was carried on in respect of salaries of household staff would not include such part, if any, of the salaries as was referable to domestic or private purposes. [14th July.

LAND REGISTRY

Mr. BOYD-CARPENTER stated that as the Land Registry in London functioned mainly as a district registry for London and adjacent areas, it would not be moved to Durham. [15th July.

DEE AND CLWYD FISHERY BOARD (PROSECUTIONS)

Sir THOMAS DUGDALE said that there had been one unsuccessful prosecution in June, 1949, by the Board under the Freshwater Fisheries Act, 1923. Since then the Board had undertaken eight prosecutions before the Llangollen magistrates court and in each case a conviction had been obtained. [15th July.

JURY SERVICE

The HOME SECRETARY said he had taken note of the comments of the Lord Chief Justice on the strain to which jurors were subjected in protracted assize cases. Asked whether he would consider the suggestion that juries should be reduced from twelve to seven as during the late war, Sir David Maxwell Fyfe said he would bear the suggestion in mind, but it would involve legislation. [15th July.

STATUTORY INSTRUMENTS

Aberdeen-Huntly-Fochabers Trunk Road (North-West of Inveramsay Junction and Another Diversion) Order, 1954. (S.I. 1954 No. 920.)

Air Navigation (General) Regulations, 1954. (S.I. 1954 No. 925.) 2s. 8d.

Birmingham-Great Yarmouth Trunk Road (Strawberry Farm, Great Yarmouth, Diversion) Order, 1954. (S.I. 1954 No. 918.)

Dangerous Machines (Training of Young Persons) Order, 1954. (S.I. 1954 No. 921.)

Hire-Purchase and Credit Sale Agreements (Control) (Revocation) Order, 1954. (S.I. 1954 No. 935.)

Hungerford-Gloucester-Ross-Hereford Trunk Road (Little Witcombe Diversion) Order, 1954. (S.I. 1954 No. 919.)

Draft **Insurance Contracts** (War Settlement) (Finland) Order, 1954. 5d.

Draft Insurance Contracts (War Settlement) (Italy) Order, 1954. 6d.

London Traffic (Prescribed Routes) (No. 14) Regulations, 1954. (S.I. 1954 No. 938.)

National Insurance (Industrial Injuries) (Mariners) Amendment Regulations, 1954. (S.I. 1954 No. 923.)

Non-Indigenous Rabbits (Prohibition of Importation and Keeping) Order, 1954. (S.I. 1954 No. 927.)

Open Cast Coal (Highway) Orders (Revocation) (No. 2) Order, 1954. (S.I. 1954 No. 906.)

Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 926.) 5d.

Stopping up of Highways (Essex) (No. 3) Order, 1954. (S.I. 1954 No. 907.)

Stopping up of Highways (London) (No. 28) Order, 1954. (S.I. 1954 No. 928.)

Stopping up of Highways (London) (No. 29) Order, 1954. (S.I. 1954 No. 929.)

Stopping up of Highways (London) (No. 30) Order, 1954. (S.I. 1954 No. 930.)

Stopping up of Highways (London) (No. 33) Order, 1954. (S.I. 1954 No. 931.)

Stopping up of Highways (Warwickshire) (No. 1) Order, 1954. (S.I. 1954 No. 908.)

Town and Country Planning (Development Plans) (Amendment) Regulations, 1954. (S.I. 1954 No. 933.) 6d.

Draft **Transfer of Functions** (Ministry of Materials) Order, 1954. 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Adoption—LIABILITY OF HUSBAND OF SURVIVING JOINT ADOPTER TO MAINTAIN CHILD

Q. Where a husband dies and the wife remarries, what is the position of the second husband as regards responsibilities, etc., in respect of a child who was legally adopted by the husband (now deceased) and his widow who is remarrying? There is no question of responsibilities on the part of the adopters to any welfare authority, and it seems to me that under s. 5 of the Adoption of Children Act, 1926, the position is just the same as regards responsibilities, etc., with a stepfather, whether a child is a natural child or an adopted child.

A. Section 5 of the 1926 Act is now represented by s. 10 of the Adoption Act, 1950, which repeals and consolidates, with amendments introduced in 1949, the earlier legislation. The effect of the amendments in the Act as a whole is to put the child even more than before into the position of a natural child of the adopting parents (see, e.g., ss. 10 (3), 13, 14 and 16 of the 1950 Act). We do not think that the husband of a surviving joint adopter is legally liable to maintain the adopted child (compare s. 42 of the National Assistance Act, 1948, with the repealed s. 14 (3) of the Poor Law Act, 1930); but if questions of public assistance should arise, then it seems, on a reading of s. 7 of the 1948 Act, that the adopted child would be taken into account as a "dependant" of the "stepfather." On the whole we agree with the tenor of our subscriber's opinion.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Estate Duty—Incidence—Devise of Farm Conditional on Payment to Trustees of Half its Ascertained Value

Q. By his will *A* devised his freehold farm lands and premises to his daughter, Mary, on the condition that she should, within three months of his death, pay to his trustees one-half of the sum at which the said farm should be valued by a valuer appointed by his trustees and he directed them on such payment being made to assure the farm to Mary or as she should direct. The farm was valued in the sum of £4,200 and Mary paid to the trustees £2,100 and directed that the farm should be conveyed to her husband and herself as joint tenants. Is Mary liable for the whole of the estate duty on the devise and, if not, for what proportion is she liable ?

A. We think that this is a rather nice point that might be the subject of some argument and that, in the absence of agreement between all concerned, might well be submitted to counsel who would have the advantage of seeing the whole scheme of the will. It appears to us, however, that although the testator framed his bequest in the form of a conditional devise, yet the substance of the matter was that Mary had an option to purchase the property at one-half of its ascertained value. If this view of the matter were correct then she comes to the realty as a purchaser and not as devisee and so is entitled to it free from all incumbrances including estate duty. That is to say, the estate duty would be payable out of residue. See *Re Fison* [1950] 1 All E.R. 501, at pp. 508 *et seq.* It is clear, however, that although in substance she had an option to purchase yet it could not be said that she did not take as a conditional devisee so that that case could be distinguished. There is some authority that in matters of incidence regard must be had to the substance rather than the form of a benefit (*Anderson's Trustees* v. *Matthew* [1916] S.C. 299), and if all the beneficiaries were *sui juris* an arrangement whereby the estate duty was apportioned half and half might be arrived at. In the absence of such arrangement we think that the executors might do well to proceed as suggested above.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Sir John Cameron, Baronet, to be a Metropolitan Magistrate in succession to Mr. Walter Blake Odgers, Q.C., who retired on 15th July.

The Queen has been pleased to approve the appointment of Mr. Francis Henry Cassels to be a Deputy Chairman of the Court of Quarter Sessions for the County of London with effect from 16th July.

The Queen has been pleased to appoint Mr. William Arthur Fearnley-Whittingstall, T.D., Q.C., to be Recorder of the City of Lincoln with effect from 14th July.

Mr. F. G. Hails, Clerk to the Nuneaton and Atherstone Justices since 1947, has been appointed Clerk to the Justices at Dartford Petty Sessional Division, Kent.

Mr. R. Howard Moore, Clerk of Baildon Urban Council for the past thirty-four years, was on 16th July appointed Chairman of the Urban District Councils Association of England and Wales.

The Board of Trade announce that Mr. James Tye has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Ashton-under-Lyne, Bolton, Oldham, Rochdale and Stockport; and for the Bankruptcy District of the County Courts of Preston, Blackpool, Blackburn and Burnley, with effect from 9th July.

Mr. William Edward Williams, solicitor, of Llanelly, has been appointed Vice-Chairman of the No. 5 (South Wales) Legal Aid Area Committee.

The following have been elected Masters of the Bench of Gray's Inn: Mr. David Karmel, Q.C., and Mr. Christopher Nyholm Shawcross, Q.C.

Personal Notes

Alderman James Henry Armistead, solicitor, of Bradford, is to resign from the West Riding County Council.

Mr. Basil David Laitner, solicitor, of Sheffield, was married on 15th July to Dr. Avril Mirrie Frampton, of Doncaster.

Mr. Alvan Esmond Slack, town clerk of Bridport since 1948, is to relinquish his duties at the end of October for health reasons.

Miscellanous

DEVELOPMENT PLAN

County Council of Lincoln, Parts of Kesteven Development Plan

On 24th June, 1954, the Minister of Housing and Local Government approved, with modifications, the above development plan, with which is incorporated a town map for Sleaford. Certified copies of the plan as approved by the Minister have been deposited at the offices of the County Planning Officer, County Offices, Sleaford, and the Sleaford U.D.C., 19 Jermyn Street, Sleaford. Certified copies thereof (other than the part relating to the Sleaford town map area) have also been deposited at the offices of the following local authorities: Grantham Borough Council, Guildhall, Grantham. Stamford Borough Council, Town Hall, Stamford. Bourne U.D.C., North Street, Bourne. North Kesteven R.D.C., 31 Clasketgate, Lincoln. South Kesteven R.D.C., 41 North Street, Bourne. East Kesteven R.D.C., 18 Northgate, Sleaford. West Kesteven R.D.C., 19 Watergate, Grantham. The copies of the plan so deposited will be open for inspection free of charge by all persons interested during normal office hours. The plan became operative as from 16th July, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 16th July, 1954, make application to the High Court.

SOCIETIES

The Solicitors' Articled Clerks' Society announce the following programme for August: Wednesday, 11th, Cricket Match *v.* Chartered Accountants' Students' Society of London. To be held at Oxshott Cricket Club, at 2.30 p.m. Visitors welcome, tea available. Sunday, 15th, Ramble over Surrey Downs; Catch 10.22 a.m. Waterloo to Box Hill or meet before 11.30 a.m. at Box Hill Station. Friday, 20th, Promenade Concert: Beethoven Night, including Symphony No. 6. B.B.C. Symphony Orchestra, Sir Malcolm Sargent. Seats 4s. Phone: Paul Clark, Hol. 6421, afternoons only, after 1st August.

It is regretted that in the report of the annual general meeting of the Solicitors' Managing Clerks' Association supplied to us, Mr. D. C. Bowhill's response was incorrectly reported. The report should have read: "Mr. Bowhill in responding said it was not his intention to address members at any length, but it would be ungracious if he did not acknowledge, as he gladly did, the honour and privilege which they had just extended to him. He hoped to have many opportunities of meeting and talking with members on the many problems and aims they all had in mind and would, therefore, content himself that evening by saying that he trusted that when next he stood before them to render his account to members they, on their part, would have no cause to regret their choice, and that he, in his turn, would be able to tell them that the high hopes with which he took up office had been amply fulfilled."

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